

# 1. ZBA Narrative

34 Wayne Ave.  
Suffern, NY 10901  
(845) 357-0830  
email: greenwellpls@aol.com

**Jay A. Greenwell, PLS, LLC**  
**Land Surveying and Land Planning**

Village of Upper Nyack  
Project Goose (11 Tompkins Court) Site Plan – ZBA Narrative  
June 2022

We are pleased to submit this application to the Zoning Board of Appeals. The subject site is shown as Tax Lot 60.14-1-12.7 (“Lot 7”) on the Town of Clarkstown tax maps and consists of 36,108 square feet of dry land<sup>1</sup> in the R-30 zone (requiring 30,000 sf lots), bounded on the west side by Tompkins Court (part of an average density subdivision) and on the easterly side by the Hudson River. The property is developed with an existing two-story frame dwelling and garage facing Tompkins Court, and an elevated pool 13-15 feet above grade at the river’s edge. Entry into the house from either the front door or garage is at the upper level of the house. The house and site are served by all required utilities, including underground electric, telephone, and cable. Municipal sewage is provided with use of an ejector pump.

The westerly side (front) of the property is relatively flat with a grade of 2.9% consisting of a front yard and a driveway. Northern and southern side yards provide access from the upper level to the lower level with an average grade of approximately 23%. These side yards are relatively small at approximately 2,700 square feet. The areas from the back of the house down to the river include a pool deck, lawn areas, flagstone patios and walkways, and stairwells. Most of this area has been graded flat. Within this area, some additional steep slopes exist comprising 2,500 square feet at grades ranging from 15% to over 40%. Total steep slopes (>15% grade) on the Lot represent 14% of total dry land area. It is further observed that many of the steep slopes on the Lot were disturbed at the creation of the Lot and subdivision (i.e. the steep slopes are neither original to the landscape nor of historical significance).

The existing house is in habitable condition despite the need for meaningful site work to enhance and improve the aesthetics, safety, and environmental attributes. The applicant purchased this house fully intending to reposition the property to meet their needs and desires, within the context of the Village of Upper Nyack’s Comprehensive Plan of 2021 and in harmony with the interests of adjoining residents. The front of the property is only perceptible to its neighbors as the property is located at the bottom of Tompkins Court, a private road. The design and plans for this Project were presented to all homeowners in an HOA meeting on April 4, 2022. As recorded in the meeting minutes, no issues were raised – See Exhibit A. In discussion with the HOA, unanimous enthusiasm for the project included appreciated investment in the neighborhood, desire to meaningfully improve existing and deteriorating conditions, and enhancements to property value. In accordance with the property’s HOA Declaration of Covenants, Restrictions, Easements, Charges and Liens, Article VII on Architectural Control provides that if the Board “fails to approve or disapprove such design and location within sixty (60) days after said plans and

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<sup>1</sup> Lot 7 area is comprised of 36,108 square feet of Dry Land and 61,522 square feet of Land Underwater. Lot 7 is a part of an average density subdivision as filed 7/9/1999 on Map 7279, Book 120 Page 11. The subdivision includes a conveyance of the lands underwater via a Letters Patent dated July 23, 1873, recorded in Book 42 of Patents at page 297 which conveyed the 6.099-acre parcel of land (as well as others) to Mr. Voorhis. The Office of General Services has affirmed that the New York State has no interest in the lands under water and that they were legally and appropriately conveyed for the purposes of commerce or the beneficial enjoyment to the landowner.

specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with - See Exhibit B. As of the date of this submission, eighty-three (83) days have lapsed without additional comment.

The rear of the property abuts the Hudson River. As such, the only character impacts would be to passing boaters and from the other side of the river, 2.5 miles away. Regardless, the objective of any plans would only be enhancing as previously mentioned.

Key elements of the repositioning include:

1. Installation of an automated gate
2. Driveway replacement with permeable pavers
3. A new roof, generally consistent with the existing roof aesthetics
4. Recladding of the front and side elevations with updated and modernized materials
5. Softening of dwelling color (currently white) to better blend into the landscape
6. Increased dwelling size but done in a manner that meaningfully mitigates increases in lot coverage
7. Use of more glass to better soften the contrast with the environment
8. Installation of an infinity pool
9. Improved landscaping
10. Site erosion remediation through use of rain gardens and retaining walls

**Zoning Summary**

As required by §10.5.17 of Local Law #5 of 2022, a comprehensive table of bulk requirements can be found on the Site Plan Section 7a. A summary of the Project’s compliance with applicable General Bulk Regulations is found below for Zone Area R-30. As referenced in the Narrative, lots in the Rose Subdivision are subject to the bulk regulations and net lot area depicted on the plat at the time the subdivision was created.

Bulk Regulation	Existing	Proposed	Comment
1. Structural setbacks	Full compliance	Full compliance	Pool deck moves inward from rear lot line
2. Building height (35 feet)	31.0 feet	33.5 feet	Maximum height increased by 2.5 feet; average height significantly less than that
3. Development Coverage (1) (25.0%)	32.4%, Impervious 32.4%, Total	24.2%, Impervious 36.2%, Total	<ul style="list-style-type: none"> <li>• Replace non-permeable driveway with a NYSDEC compliant permeable surface; ~3,000 square feet improved</li> <li>• Removal of one of the pool deck staircases</li> </ul>
4. Building Coverage (1) (12.0%)	9.1%	17.9%, 11.1% excluding below pool deck	<ul style="list-style-type: none"> <li>• 76% of Building Coverage at grade</li> <li>• 23% of Building Coverage entirely subterranean beneath the existing pool deck, i.e. no incremental visible expansion</li> </ul>
5. FAR (1) (0.20)	0.13	0.22, 0.18, at ground level	<ul style="list-style-type: none"> <li>• 18% of FAR in Basement, below existing pool infrastructure</li> </ul>

(1) Variance required.

Bulk Regulation	Existing	Proposed	Comment
6. Steep Slope Disturbance (1)	NA	Full Site Improvement Plan	<ul style="list-style-type: none"> <li>• 14% of net lot area subject to steep slopes</li> <li>• Plans to improve nearly all steep slopes</li> <li>• Dramatic improvement to ground stability and drainage</li> </ul>

(1) Variance required.

As noted, certain elements of this plan will require zoning variances:

- *Development Coverage:* The property is existing nonconforming. Total existing Development Coverage is 32.4%, all of which is Impervious Surface Coverage, vs. 25.0% allowable per zoning code. Improvements to the Lot will remove a lot of this impervious hardscape and reduce Impervious Surface Coverage to 24.2%. Most of this reduction will come from the driveway utilizing the latest permeable paver technology that would meet or exceed NYSDEC standards. Including all porous surfaces despite meeting NYSDEC standards, total proposed Development Coverage increases 3.8 points to 36.2%. We believe this variance meets the required criteria for a bulk variance.
  - Undesirable change in the character of the neighborhood or a detriment to nearby properties: *No undesirable changes.* (i) the development plan was shared with the HOA and it was unanimously supported. (ii) Any changes that would impact neighborhood or nearby properties are from the front of the property. (a) Installation of an automated gate should not adversely impact anyone and consideration has already been made to allow for continued street circulation, including expected turnarounds in-driveway; (b) Color change of house softens and blends the property into the environment relative to the existing white infrastructure; (c) Driveway is being replaced with attractive permeable pavers in place of non permeable pavers; (d) No views are adversely impacted as the shape and height of the roof is largely unchanged. The garage height is being elevated by 2.5 feet but it is currently the lowest roof point and finished elevation is well below that allowed by code.
  - Benefit sought can be achieved by some method: *No.* Changes to the design and programming proposed would likely be less advantageous to all constituents and stakeholders.
  - Substantial: *Not substantial.* (i) Impervious coverage decreases from 32.4% to 24.4%. (ii) Most of the increase from 32.4% to 36.2% is from permeable surfaces and installation of retaining walls and terraces which greatly improves existing erosion concerns and dramatically enhances property and area aesthetics. (iii) Increases in Development Coverage are imperceptible to neighbors or nearby properties.
  - Adverse effect or impact on the physical or environmental conditions in the neighborhood or district: *No adverse impact.* Quite the contrary. The improvements substantially improve the physical and environmental conditions of the property, neighborhood, and surrounding area. Key benefits include replacement of substantial impervious hardscape with permeable surfaces and pavers and creation of attractive retaining walls to address drainage and erosion concerns. Additionally, the eastern retaining wall, which currently supports the pool deck, is being shortened and brought inland by two feet.


- Self created difficulty: *Not self-created*. The property was acquired with a high degree of hardscape nonconformity and a substantial drainage and erosion problem with adverse health, safety, and environmental implications.
- **Building Coverage**: Applicant has gone to great lengths to contain expansion areas to already-improved locations. Notably, the newly improved area under the pool deck does not increase Development Coverage while increasing Building Coverage. The proposed expansion plan thoughtfully takes advantage of the existing slope to virtually hide the vast majority of incremental Building Coverage. Seventy-seven percent (77%) of the increase in Building Coverage is contained below the pool deck, most of which is entirely subterranean and without windows. As previously mentioned, the size of this existing infrastructure (pool deck) is shortened. While proposed Building Coverage increases from 13.8% to 17.9%, it is notable that 6.8 points of Building Coverage is below the pool deck, a Development Coverage that currently exists. Exclusive of the area below the pool deck, Building Coverage is only 11.1%. We believe this variance meets the required criteria for a bulk variance.
  - Undesirable change in the character of the neighborhood or a detriment to nearby properties: *No impact to the neighborhood or nearby properties*. (i) any building coverage changes are in the rear of the property and not visible to neighbors or neighboring properties. (ii) Building Coverage changes in the rear of the property are mostly beneath existing infrastructure and subterranean.
  - Benefit sought can be achieved by some method: *No*. The benefits of this design can only be achieved as proposed. While a different design could be implemented, it would require a full redesign with associated soft costs, but more importantly it would be more detrimental to the environment, less attractive, and result in meaningfully more above-ground and visible bulk.
  - Substantial: *Not substantial in that the vast majority of the proposed incremental building coverage does not create additional perceptible or practical bulk*. Most of the incremental Building Coverage is being reclaimed from areas and infrastructure under the existing pool deck. This project seeks to simply reclaim this space, which is currently encompassed by stark white walls, with a muted grey and glass façade which will blend substantially better into the existing environment. Substantial time, soft costs, and willingness to incur significant incremental development costs has been considered in adherence to the project’s development tenets: (i) substantially improve the overall design aesthetic of the dwelling, (ii) improve environmental and safety conditions of the property, (iii) beautify the landscape, and (iv) limit incremental development coverage. It is also worthy to note that the mathematical magnitude of this variance is such because of the decision to build out beneath the existing pool deck. In doing so, additional space is required to build a tunnel from the main house to this basement area and building out as a single level, as opposed to two or three stories (as is customary in this HOA), magnifies the adversity of this calculation relative to the bulk allowance.
  - Adverse effect or impact on the physical or environmental conditions in the neighborhood or district: *No adverse effect*. The increases in Building Coverage are entirely over existing Development Coverage.
  - Self created difficulty: *Yes to the extent that Applicant has chosen to embark on a property improvement program. No to the extent that the existing Building was inefficiently sized and not ideally developed relative to the lot on which it exists*. Effecting the proposed changes will help ensure that the asset remains appropriately positioned relative to its comparable group.

- *FAR*: Aesthetics and structural development under the pool require more floor area than otherwise necessary building above ground. We believe seeking a variance would be preferable to all interested parties. Proposed FAR 0.22 vs 0.20 allowable per zoning code. It is notable that 0.4 of this FAR is below the pool deck. Exclusive of the area beneath the pool deck the FAR is only 0.18. We believe this variance meets the required criteria for a bulk variance.
  - Undesirable change in the character of the neighborhood or a detriment to nearby properties: *No impact to the neighborhood or nearby properties*. Similar to the rationale for Building Coverage variance, (i) additional FAR is located in the rear of the property and not visible to neighbors or neighboring properties. (ii) most of the incremental FAR and all of the excess FAR is beneath existing infrastructure and furthermore, most of it is subterranean.
  - Benefit sought can be achieved by some method: *No*. Achieving the expansion sought above ground, even if FAR was limited to 0.20, would have a substantially greater effect on the perceived and practical bulk as some would be added to the Western elevation which is visible to the HOA.
  - Substantial: *Not substantial*. The existing house was underbuilt. As such, most of the FAR expansion is within zoning allowances.
  - Adverse effect or impact on the physical or environmental conditions in the neighborhood or district: *No adverse effect*. As stated above, all of the expansion is over or under existing infrastructure.
  - Self created difficulty: *Similar to Building Coverage, yes to the extent that Applicant has chosen to improve the property*. However, in doing so the self-created difficulty will provide a betterment to the neighborhood and community through increased tax assessments, property value association, and additional comparables for the Upper Nyack Tax Assessor all without creating additional burden on the resources currently provided to the community. *The variance required is not self-created to the extent that the property was underdeveloped and not adequately maintained prior to purchase*. The reality is that to address the existing property deficiencies a more pervasive approach is required to have the end be justified by the means. The project, and its scope, was discussed with members of the Planning Board prior to (i) acquiring the property and (ii) knowledge that the new zoning ordinance included FAR as a new element of the bulk table.
- *Steep Slope Disturbance*: We believe this variance meets the required criteria for a bulk variance.
  - Undesirable change in the character of the neighborhood or a detriment to nearby properties: *No*. In addition to the positive effects of these efforts, it is notable that the areas being disturbed (i) do not have any houses or roads in front of them, (ii) are not the cliffs typified by many other Upper Nyack lots on the Hudson River, (iii) are directly in front of the Hudson River the land and land underwater area for which is privately owned by the Applicant – See footnote 1. It should be noted that the slopes existing at the property today are not the original slopes. In connection with the creation of the subdivision, Lot and residence in 2006, the original slopes were modified / disturbed. Further modification of these slopes has no impact to any natural or historical significance of the area.
  - Benefit sought can be achieved by some method: *No*. Some of the steep slope disturbance directly addresses drainage and erosion issues that cannot be adequately achieved without a similar significant effort. Some of the disturbance pertains to construction

equipment access. Applicant intends to evaluate delivery of equipment and materials via the Hudson River but at this point feasibility and practicality has not been ascertained.

- Substantial: *Not substantial*. Steep slopes do not comprise a large area (~5,200 square feet), nor are they a significant component of net lot area (less than 15% of total). Given the steep slope area is so small and the requirement to get construction equipment to the site, we have indicated 100% disturbance but it is our hope that we will not require the entirety of the variance requested.
- Adverse effect or impact on the physical or environmental conditions in the neighborhood or district: *No*. Proposed efforts will improve the safety, aesthetics, and preservation of the environment. The Applicant intends to restore, plant and/or terrace sections of its property that are eroding or subject to significant drainage issues. Terraces, and their supporting retaining walls in compliance with code, are to be added in the rear of the property.
- Self created difficulty: *No*. Drainage and erosion have been a persistent and pervasive issue with the property since before the Applicant has owned it. Failure to rectify existing conditions will lead to further deterioration and could cause a health, safety, and environment concern. Furthermore, in connection with discussion of this plan with members of the Planning Board before the property was acquired, it was requested by those members that Applicant deliver a “comprehensive landscaping proposal” when requesting formal approval for this project.

The Applicant has invested significantly in the research, support, and creation of this Plan and has gone to extensive lengths to minimize its development impact and support local objectives. Thank you in advance for your consideration.

  
Jay A. Greenwell (Jun 27, 2022 08:34 EDT)

Jay A. Greenwell, PLS

## ZBA Narrative, Exhibit A

### HUDSON SHORES HOA MEETING MINUTES APRIL 4, 2022

Meeting was called to order at 7:38 pm.

Those present were: [Owner 1], Adam Budgor, [Owner 2], [Owner 3], [Owner 4], [Owner 5] and Donna Licata (JL Management & Realty LLC).

#### Motions:

- Motion passed to accept minutes of July 7, 2021
- Motion passed to accept proposed budget (should LS figure need to be adjusted, a revised budget will be presented).

#### Discussions:

- Pavement: Blacktop committee formed and will set up appointment with paving company to discuss repair vs. replacement. Date TBD on either Wednesday or Friday after 5 pm or weekend. Committee members are: Adam B., [Owner 1], [Owner 5], and [Owner 4]
- Mailboxes: Each homeowner will submit their mailbox selection via email to all homeowners for approval by April 21. Installation on all mailboxes target date is May 7.
- Pump Station: Adam B. stated he would like to add plantings as part of beautification around the pump.
- Landscaping: [Owner 5] will speak to Sergio and Salizar (sp?) to obtain pricing to landscape easement areas. Adam B. to cleanout brush and provide plantings around mechanicals.

- Financials were Presented.
- Adam B. spoke to homeowners regarding his proposed renovations on his home. Architectural drawings were presented. No issues were raised.

#### Elections:

- [Owner 3] nominated Adam Budgor for a position on the board. Nomination was accepted and approved by all homeowners.
- Election of officers: Adam Budgor, President (term ends 6/2025); [Owner 1], Secretary/Treasurer (term ends 6/2024) and [Owner 3], Vice President (term ends 6/2023).

Meeting was adjourned 9:17 pm.

## ZBA Narrative, Exhibit B

### ARTICLE VII. ARCHITECTURAL CONTROL

No building, fence, wall or other structure, or change or alteration to the exterior of the Homes or in the landscaping shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to, or change or alteration thereto, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The provisions of this Paragraph shall not apply to Developer. As set forth in Article VIII, Section 7(d) of the Association By-Laws, a two thirds majority of a quorum of the Board of Directors or architectural committee shall be required for approval of any addition, change or alteration. Notwithstanding the foregoing, work requiring a building permit and certificate of occupancy is subject to the approval of the Village of Upper Nyack and a Home Owner is required to secure all such necessary approvals and permits before any work commences.